Hovsepian v. Apple, Inc.
Doc. 197 Att. 13

EXHIBIT N

Dockets.Justia.com

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE:	) C-05-01114-JW
ACACIA MEDIA	)
TECHNOLOGIES	) JUNE 14, 2006
CORPORATION.	)
	) PAGES 1-223
______________________	)

THE PROCEEDINGS WERE HELD BEFORE

THE HONORABLE UNITED STATES DISTRICT

JUDGE JAMES WARE

A P P E A R A N C E S:

FOR THE PLAINTIFFS: HENNIGAN, BENNETT & DORMAN
BY: RODERICK G. DORMAN
ALAN P. BLOCK
865 SOUTH FIGUEROA STREET
SUITE 2900
LOS ANGELES, CALIFORNIA 90017

FOR THE DEFENDANTS: KEKER & VAN NEST
BY: DARALYN J. DURIE
DAVID J. SILBERT
DAN E. JACKSON
710 SANSOME STREET
SAN FRANCISCO, CALIFORNIA
94111

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

YOUR OPPONENT OR OTHERS WHO MIGHT WISH TO ADDRESS IT.

MR. BENYACAR: DAVID BENYACAR.

JUST A COUPLE OF VERY QUICK POINTS, YOUR HONOR. LET ME SEE IF I CAN SEE HOW THIS ELMO WORKS.

AN INITIAL POINT OF CLARIFICATION, THE COURT WILL RECALL THAT THE LAST TIME THAT WE WERE ALL TOGETHER, THE COURT SET A SCHEDULE FOR THE ROUND THREE DEFENDANTS WHEREBY TERMS THAT THE COURT HAD ALREADY CONSTRUED WOULD BE ADDRESSED BY THE ROUND THREE DEFENDANTS IN THE AUGUST MARKMAN HEARING AND NOT IN THIS MARKMAN HEARING. AND "ITEMS CONTAINING INFORMATION" BEING A TERM THAT THE COURT HAS ALREADY CONSTRUED IS FOR US A RECONSIDERATION TERM, AND SO WE WILL ADDRESS IT NEXT TIME, BUT I JUST WANT TO ADDRESS ONE POINT QUICKLY THAT THE COURT ASKED COUNSEL AS TO WHETHER OR NOT THERE IS ANYTHING IN THE PROSECUTION HISTORY PERTINENT TO THIS POINT.

IT SEEMS TO ME AS BEST I UNDERSTAND IT THAT ACACIA'S POSITION IS THAT THE ITEMS CAN BE THE INFORMATION ITSELF AND THEY POINT TO VARIOUS QUOTES THAT SAY ITEMS OF AUDIO AND VIDEO INFORMATION AND THEY SAY, SEE, THE ITEMS CAN BE INFORMATION, THEY

a5f90b28-cd30-475d-b962-e029a5206c8b

DON'T HAVE TO BE THE PHYSICAL MEDIA WHICH HOLD IT.

BUT WHAT I SHOW UP HERE IS CLAIM 19 WHICH WAS APPLICATION CLAIM 18 WAS AMENDED DURING PROSECUTION SPECIFICALLY TO CHANGE THE CLAIM FROM "INFORMATION" TO "ITEMS CONTAINING INFORMATION" BOTH IN THE PREAMBLE AND IN THE BODY OF THE CLAIM.

AT THE SAME TIME THIS AMENDMENT WAS MADE, CLAIM 41 WAS ADDED TO, TO THE APPLICATION WHICH ALSO CONTAINED "ITEMS CONTAINING INFORMATION."

SO WE WOULD SUBMIT THAT ACACIA'S CONSTRUCTION WOULD RENDER THIS AMENDMENT A NULLITY BECAUSE THEY'RE CONSTRUING ITEMS CONTAINING INFORMATION TO BEING JUST THE INFORMATION ITSELF.

AND THIS IS ON PAGE 12 OF OUR BOOK, YOUR HONOR, AND LIKE I SAID, ON OTHER POINTS WE WILL ELABORATE IN MORE DETAIL DURING THE NEXT ROUND.

THE COURT: ALL RIGHT. MR. DORMAN, DO YOU WANT TO REPLY?

MR. DORMAN: THANK YOU, YOUR HONOR. YOUR HONOR, THROUGH THE SPECIFICATION "ITEM" CAN BE A UNIT OF INFORMATION AS WELL. FOR EXAMPLE, A MOVIE, JUST LIKE A MOVIE, FOR EXAMPLE.

A MOVIE CAN BE AN ITEM. ONE OF THE REFERENCES THAT I MENTIONED TO YOU HAS THE SPECIFICATION, IN THE SPECIFICATION TALKS ABOUT

ENCODING.

THIS FILE IS ADDRESSABLE AND THERE ADDRESSABLE MEANS LOCATED MEMORY WITH A UNIQUE IDENTIFICATION CODE ASSIGNED TO THE DATA BY THE IDENTIFICATION ENCODER.

MR. KREEGER: YOUR HONOR, HERE IS OUR PROPOSED CONSTRUCTION STORE ADDRESSABLE. THERE IS A KNOWN ASSOCIATION BETWEEN THE DATA BLOCK AND ITS STORAGE LOCATION SO THAT THE TRANSMISSION SYSTEM CAN RETRIEVE THAT INDIVIDUAL DATA BLOCK BY USING ITS STORAGE LOCATION.

AND WE SUBMIT THAT THAT IS THE DEFINITION OF ADDRESSABILITY WHICH THE PATENT TALKS ABOUT AND IT'S ALSO CONSISTENT WITH ITS ORDINARY MEANING.

THE COURT: AND WHY DOES IT HAVE TO BE, WHY DOES IT HAVE TO BE STORED?

MR. KREEGER: WELL, HERE LET'S GO TO THE NEXT SLIDE AND WE'LL TALK ABOUT WHAT THE SPEC TALKS ABOUT.

THE SPEC TALKS ABOUT ADDRESSING AND ADDRESSABILITY AND IT DOES SO IN THE CONTEXT THAT IS TALKING ABOUT LOCATING SOMETHING IN STORAGE.

HERE'S AN EXAMPLE. THIS IS TALKING IN COLUMN 8 ABOUT USER AND SYSTEM ADDRESS REQUIREMENTS AND IT GIVES AN EXAMPLE OF A SONG. A USER MAY

DESIRE TO LISTEN TO A PARTICULAR SONG. THEY ENTER THE SONG NUMBER.

INTERNAL TO THE SYSTEM THE SONG IS ASSOCIATED WITH A STARTING FRAME NUMBER INDEXED BY THE SYSTEM OPERATOR AND THEN THE FRAMES ARE A SUBSET OF AND ARE CONTAINED WITHIN THE ITEMS STORED IN THE COMPRESSED DATA LIBRARY.

SO WHAT IT DOES IS IT ENTERS A SONG AND NUMBER AND THERE'S A SYSTEM BETWEEN WHAT THAT SONG NUMBER IS AND WHERE IT CAN BE FOUND IN THE STORAGE. AND THAT'S WHAT THE PATENT TALKS ABOUT.

AND NEXT SLIDE. THERE'S SOMETHING SIMILAR THAT I THINK MR. DORMAN REFERRED TO. AND THIS IS ABOUT THE UNIQUE ADDRESS CODE AND THIS IS IN COLUMN 10 AND IT TALKS ABOUT WAYS TO REFER TO ACCESS ITEMS IN THE COMPRESSED DATA LIBRARY THROUGH THE ACCESS CODE.

AND THIS IS A FILE ADDRESS FOR ITEMS IN THE COMPRESSED DATA LIBRARY. AND WHAT IT DOES IS IT ALLOWS FOR COMPLETE ADDRESSABILITY FOR THE ITEMS STORED IN THE COMPRESSED DATA LIBRARY. AND THIS CONCEPT OF THE ADDRESS TELLS YOU WHERE YOU CAN FIND IT IN STORAGE THAT THE PATENT WAS TALKING ABOUT IS QUITE CONSISTENT OF HOW IT WAS USED BY THOSE OF SKILL IN THE ART.

WE SUBMITTED THREE TECHNICAL DICTIONARIES ON THIS POINT, YOUR HONOR. I DON'T THINK THERE'S ANY DISPUTE ABOUT THIS. THEY ALL DEFINE THE TERM ADDRESS AS USED BY THOSE IN THIS ART TO REFER TO A LOCATION IN STORAGE.

THAT'S WHAT PEOPLE MEAN WHEN THEY SAY I'M GOING TO GIVE YOU THE ADDRESS OF THIS PARTICULAR PIECE OF DIGITAL INFORMATION. THAT DEFINES WHERE I CAN FIND IT IN THE STORAGE. THAT'S THE I TRIPLE E DEFINITION WAS. THAT'S ALSO THE TERM OF COMPUTING. AND THE TERM REFERS TO THE LOCATION IN MEMORY AND MADE FOR THE PURPOSE OF RETRIEVING OR STORING THAT INFORMATION AT THAT LOCATION.

SO THE SPEC TALKS ABOUT ADDRESSING IN THAT CONTEXT AND THOSE OF THE SKILL IN THE ART REFER TO IT IN THAT CONTEXT.

THE COURT: WELL, BUT THIS IS A METHOD CLAIM AND, AND AT THIS POINT IN THE METHOD I'M PLACING THE DATA INTO DATA BLOCKS WHICH ARE ADDRESSABLE. I HAVEN'T STORED IT ANYWHERE. ALL I WANT IT TO DO IS THAT I WANT IT TO BE ADDRESSABLE.

IN OTHER WORDS, I WANT TO FIND IT. WHY SHOULD I INTRODUCE STORAGE WHEN I'M, WHEN I'M SIMPLY DEFINING ADDRESSABILITY?

MR. KREEGER: THAT'S INHERENT TO THE

a5f90b28-cd30-475d-b962-e029a5206c8b

CONCEPT OF ADDRESSABILITY. IF YOU DON'T HAVE A LOCATION WHERE YOU CAN FIND IT, THEN THE THING IS NOT ADDRESSABLE.

THE COURT: WELL, LATER ON I MIGHT HAVE TO DO THAT BUT IN ORDER FOR IT TO BE ADDRESSABLE, I SIMPLY HAVE TO GIVE IT SOME KIND OF SEQUENCE OR NUMBERING SCHEME. I MAY ACTUALLY PUT IT IN FIVE DIFFERENT PLACES AS LONG AS MY COMPUTER KNOWS TO GET PLACE FIVE FIRST, PLACE FOUR SECOND, PLACE THREE THIRD AND THEN I BRING IT BACK TOGETHER IN ITS ORIGINAL PLACE BUT ALL OF THAT SIMPLY MEANS THAT, THAT IT IS ADDRESSABLE, NOT THAT, NOT THAT IT IS STORED.

MR. KREEGER: I'M NOT QUIBBLING. I THINK YOU'RE ABSOLUTELY RIGHT. OUR CONSTRUCTION BELIEVES THAT THERE SHOULD BE A KNOWN ASSOCIATION BETWEEN THE DATA BLOCK AND WHERE IT WILL ULTIMATELY BE STORED.

WHAT YOU'RE TALKING ABOUT IS EXACTLY THAT THERE WILL BE SOME WAY TO ASSOCIATE THIS DATA BLOCK WITH ITS ULTIMATE LOCATION AND STORAGE AND WE'RE NOT REQUIRING THAT THAT BE KNOWN IN ADVANCE.

WE'RE REQUIRING THAT AT THE POINT AT WHICH THAT THE SEQUENCE OF BLOCKS FOR IT TO BE ADDRESSABLE, THERE HAS TO BE SOME ASSOCIATION WITH

a5f90b28-cd30-475d-b962-e029a5206c8b

THAT BLOCK AND ITS EVENTUAL LOCATION AND STORAGE.

THE COURT: BUT AT THIS STEP IN THE METHOD, IF I'M PRACTICING THIS METHOD, ALL I HAVE TO DO IS TO PLACE THE INFORMATION INTO BLOCKS WHICH ARE ADDRESSABLE, IN OTHER WORDS, THE BLOCKS HAVE TO BE ASSOCIATED WITH SOME METHOD BY WHICH I CAN GAIN ACCESS.

MR. KREEGER: WHEN STORED. THAT'S THE PART THAT IS CRUCIAL TO THIS. YES, IT COULD BE THE TIME CODE. IN FACT, THE TIME CODE, IF IT WERE ASSIGNED AT THIS STEP, THE PATENT TALKS AT COLUMN 10 ABOUT COLUMN 10, LINE 23, THAT, THAT YOU GO THROUGH THE STEP OF COMPRESSION AND, AND AFTER COMPRESSION THE FILE MAY CONTAIN THE COMPRESSED AUDIO AND/OR VIDEO DATA, TIME MARKERS, AND THE PROGRAM NOTES.

SO THOSE TIME MARKERS THAT WERE ASSIGNED AT THIS STEP OF THE CLAIM COULD HAVE CARRIED FORWARD THROUGH COMPRESSION AND THEN THEY COULD HAVE BEEN CARRIED TO THE STORAGE COMPRESSION. AND THE POINT IS THAT THAT ASSOCIATION THAT IS MADE WITH THESE PARTICULAR DATA BLOCKS HAS TO TIE, AT SOME POINT, WITH THE STORAGE LOCATION BECAUSE THAT'S THE WHOLE CONCEPT OF ADDRESSABILITY. IF YOU DON'T HAVE THAT, YOU DON'T HAVE ADDRESSABILITY.

PROCESS.

ONE STEP IS COMPLETED BEFORE THE NEXT STEP BEGINS AND THAT'S WHAT WE WOULD ASK THE COURT TO DO WITH CLAIM 41.

I HAVE SOME SLIDES IN MY BOOK WHICH IS IN TAB 5, BUT I DON'T THINK THAT I NEED TO GO THROUGH SOME OF THESE BECAUSE THEY JUST DEMONSTRATE WHAT THE COURT HAS ALREADY OBSERVED WHICH IS THE PLAIN LANGUAGE OF THE CLAIM AND WHICH DESCRIBES THE OUTPUT FROM ONE STEP SERVING AS THE INPUT TO THE NEXT STEP.

THE OTHER THING THAT I JUST WANT TO SAY IS THAT ON THIS POINT IS OAK ALSO SAID THAT IT'S PERTINENT THAT THE SPECIFICATION DESCRIBES A SEQUENTIAL PROCESS.

AND THE SPECIFICATION IS REPLETE WITH, WITH EXAMPLES OF HOW THE STEPS IN CLAIM 41 ARE PERFORMED ONE AFTER THE OTHER WITH NO OVERLAP.

THE SLIDE WHICH I KNOW IS HARD TO SEE AND IT DOESN'T COME OUT WELL, BUT IT'S ON PAGE 21 OF THE HANDOUT, YOUR HONOR, SHOWS THE CORRESPONDENCE TO CLAIM 27 OF THE DIFFERENT STEPS IN CLAIM 41 AND HOW CLAIM, HOW FIGURE 7 SHOWS EACH ONE OF THOSE STEPS BEING PERFORMED SEQUENTIALLY, ONE AFTER THE OTHER.